IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

WP No. 653 of M/s 2003, decided on 25-07-03

Mehra Gramodhyog Sansthan ……. Petitioner

Vs.

Distt. Judge Haridwar and another ……. Respondents

A.F.R. (Approved for Reporting)
~~Not approved for reporting~~

Initials of Judge

Date 25/7/2003

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

COURT NO.6

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 653 (MS) OF 2003

Mehra Gramodhyog Sansathan …….…… PETITIONER

Versus

District Judge Haridwar and another.…… RESPONDENTS

Hon'ble Rajesh Tandon J.

Heard Sri Sidhartha Sah, Advocate for the petitioner and Sri N. Prasad, Standing Counsel for the respondents.

There is no private party in the writ petition and only District Judge is the party and respondent no.2 is the general public. With the consent of both the parties the writ petition is decided finally at the admission stage.

According to the petitioner he is a registered society under Societies Registration Act and its renewal for the further period of five years w.e.f. 2001 is continuing. It was argued that the society was registered with the object of social service for the poor, helpless, lepers, down trodden, illiterate, backwards etc. In the year 1992 the petitioner's society purchased a landed property situated at circle no.3 village Jwalapur, District Haridwar bearing Khasara no.704 and 705 having total area of 0.594 hectare for total sale consideration of Rs.35,000/- for the purpose of public welfare and social service but he could not use the said land for his object and the same is lying vacant.

On 20.7.2002 the petitioner's society called a general meeting of the society and a resolution was passed therein authorising Principal Secretary to move an application before the District Judge, Haridwar for granting permission to sell the aforesaid land of the petitioner society as envisaged under section 5-A of Societies Registration Act 1860. In pursuance of the resolution the Principal Secretary of the Petitioner Society filed an application in the Court of District Judge, Haridwar. On the aforesaid application notices were issued to the general public but no objections were filed. The short submission, therefore, is that there is no impediment to grant the permission to the society for carrying out the object of the society.

Section 5-A of Societies Registration Act, 1860 provides as under:

(1) Notwithstanding anything contained in any law, contract or other instrument to the contrary it shall be lawful for the governing body of a society registered under this Act or of its members to transfer, without the previous approval of the court immovable property belonging to any such society.

(2) Every transfer made in contravention of sub section (1) shall void.

Explanation 1- The word 'court' shall have the meaning assigned to it section 13.

Explanation- II- The expression 'transfer' shall for the purposes of this section means-

(a) a mortgage, charge, sale gift or exchange;

(b) lease for a term exceeding five years; or

(c) Irrevocable licence.

Section 5-A provides that the transfer shall not be made without approval of the court. The counsel for the petitioner has argued that the learned District Judge while rejecting permission has not applied

his mind to the facts of the application filed under section 5-A. In fact there was no opposition from the general public or any member of the society so as to form opinion by the District Judge while rejecting the application for transferring the property. It was argued that the learned District Judge should have examined the record of the society himself before rejecting the application.

I have perused the application and the record of the writ petition and gave a careful consideration to the aforesaid submissions. In my opinion this section has been enacted only for putting a check and balance regarding the affairs of the society from transferring its immovable properties without the previous approval of the Court. In the case *Rajnath Misra vs. The Xth Addl. District Judge, 1991A.W.C. 664*, it has been held as under:-

"*The said section has been enacted for putting a check on the society from transferring its immovable properties without the previous approval of the court so that the court may also look into it and give permission only if the court is satisfied that the transfer of any immovable property is being made in the interest of the society and not in the manner which is detrimental to the interest of the society. This is the entire scope of said section. The only objection which is contemplated within the purview of the aforesaid section is that the governing body of the society is proposing to transfer its immovable property which is contrary to the interest of the institution.*"

In my opinion the learned District Judge has disposed of the application in a very cursory manner. The order passed by the District Judge being not a reasoned order it requires reconsideration. Section 5-A of the Societies Registration Act permits transfer in the form of (a) a mortgage, charge, sale, gift, or exchange, (b) lease for a term exceeding five years or (c) irrevocable licence. The Court below,

therefore, should have applied his mind as to wither any of the three modes for transfer of the property is intended for the welfare of the society and to fulfil its aims.

Thus the writ petition is allowed. A writ of certiorari is issued quashing the order-dated 3.5.2003. The matter is sent back to the District Judge, Haridwar for considering the application under section 5A of the Act. The petitioner shall appear before the District Judge, Haridwar in the second week of August 2003, and the District Judge after hearing the petitioner and general public which can be termed as 'Aam and Khas' shall decide the case according to law.

25.07.2003 (Rajesh Tandon, J.)

*Dhyani